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11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
12 **FOR THE COUNTY OF LOS ANGELES**

13 HILL RHF HOUSING PARTNERS, L.P., *et al.*,

14 Petitioners,

15 vs.

16 CITY OF LOS ANGELES, *et al.*,

17 Respondents.

Case No. BS170127

(Department 86, Hon. Amy D. Hogue)

RESPONDENTS' OPPOSITION BRIEF

Trial Date: September 19, 2018

Department: 86

Petition Filed: July 3, 2017

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1 **I. SUMMARY OF ARGUMENT**

2 Hill RHF Housing Partners, L.P., and Olive RHF Housing Partners, L.P. (“Petitioners”)
3 challenge the formation of the Downtown Center Business Improvement District (“DCBID” or
4 “District”). The DCBID is a Business Improvement District (“BID”) formed to provide “safe and
5 clean” services and “economic development” services directly and only to properties assessed by the
6 DCBID. The DCBID determined and separated the amount of services provided directly to the assessed
7 properties (the “special benefit”) from the amount of services that would be provided to the public at
8 large (the “general benefit”) and assessed properties only for the cost of the special benefit. The DCBID
9 determined that services would be provided to assess properties proportional to the size of the structures
10 on the properties, after accounting for space dedicated to parking, and assessed that proportional cost.
11 The DCBID thus properly determined the amount of special benefit provided, and assessed properties
12 no more than their proportional cost for the special benefit. The DCBID is constitutional under the
13 controlling authority. (*Dahms v. Downtown Pomona Property* (“*Dahms*”) (2009) 174 Cal.App.4th 708,
14 722.)

15 BIDs are governed by Article XIID, § 4, of the California Constitution, which provides:

16 An agency which proposes to levy an assessment shall identify all parcels
17 which will have a special benefit conferred upon them and upon which an
18 assessment will be imposed. The proportionate special benefit derived by
19 each identified parcel shall be determined in relationship to the entirety of
20 the capital cost of a public improvement, the maintenance and operation
21 expenses of a public improvement, or the cost of the property related service
22 being provided. No assessment shall be imposed on any parcel which
23 exceeds the reasonable cost of the proportional special benefit conferred on
24 that parcel. Only special benefits are assessable, and an agency shall
25 separate the general benefits from the special benefits conferred on a parcel.
26 Parcels within a district that are owned or used by any agency, the State of
27 California or the United States shall not be exempt from assessment unless
28 the agency can demonstrate by clear and convincing evidence that those
29 publicly owned parcels in fact receive no special benefit.

30 Thus, a BID must: (1) separate the special benefit conferred on an assessed properties from the
31 general benefit provided by an improvement (the “separation requirement”); and (2) assess no
32 more than the reasonable cost of the “proportional special benefit conferred on that parcel” (the
33 “proportionality requirement.” (*Dahms* at 722-726.)

34 By quantifying and calculating the general and special benefit the DCBID satisfies the

1 separation requirement (Petitioners refer to this as “identification”). The Engineer determined, based
2 on his experience and studies of the provision of BID services the evidence, that no more than 1% of
3 the DCBID’s services would provide a general benefit.

4 The special benefit conferred on assessed properties are the “services directly benefiting each
5 of the assessed parcels in this specialized zone.” (AR 42.) These services are provided through a
6 “Clean and Safe” program, an “Economic Development” program, and “Management” services. (AR
7 42-44.) Because the DCBID provides its services directly to assess properties, the services themselves
8 are the special benefit. (*Dahms*, 174 Cal.App.4th at 722.) An Engineer with over 50 years’ experience
9 analyzing BIDs, and relying on studies of the provision of services in BIDs, determined that some of
10 the DCBID’s services “conceivably” could confer a general benefit. (AR 112-115.) The Engineer
11 found that although the services and their resulting effects are intended to be provided directly and
12 only to the assessed properties, some of the services mistakenly could be provided elsewhere as a
13 “spillover” effect. (*Id.*) This properly separates the DCBID’s special benefit from its general benefit
14 and meets the “separation” requirement.

15 Similarly, the DCBID assesses only the proportional benefit conferred on each assessed parcel.
16 Based on the Engineer’s experience and studies of BID services, assessed properties would receive
17 services and the effects of these services proportional to the size of structures on the properties. (*Id.*)
18 The DCBID makes assessments on that basis, meeting the “proportionality” requirement. The DCBID
19 thus passes constitutional muster.

20 Petitioners provide no competent evidence, nor any evidence whatsoever, to contradict these
21 findings. Nor did Petitioners contest these findings during the administrative review process. Although
22 Petitioners filed a ballot opposing the creation of the DCBID, Petitioners never raised any constitutional
23 or factual concern regarding the DCBID. Those challenging the creation of BID must exhaust
24 administrative remedies by presenting the evidence and arguments on which they rely during the
25 administrative review process. Petitioners did not do so and so cannot raise those arguments now.

26 Moreover, the Record shows that the City meets its burden of demonstration. Under the
27 controlling authority (ignored by Petitioners) a BID providing security, cleaning, and economic identity
28 services directly to assessed properties is providing a special benefit equal to the cost of the services so

1 provided. (*See Dahms, supra*, 174 Cal.App.4th at pp. 721-726.) The record cited above shows that the
2 DCBID will provide services directly to the assessed properties, along with the indirect, derivative
3 effects of those services (e.g., increased commercial activity.) The assessed properties pay only for
4 the costs of the services provided directly to them.

5 Petitioners argue, largely based on mischaracterizing those few authorities they considered, that
6 the DCBID does not properly account for special and general benefits. Petitioners thus argue that the
7 DCBID will not provide special benefits to the assessed parcels because “general economic and quality
8 of life enhancements do not constitute special benefits.” (Opening Brief at p. 15.) But the special
9 benefit here is the services themselves, i.e., the clean and safe services, the marketing and development
10 services, and the administration of the DCBID itself. (*Dahms, supra* at 726.) The controlling authority
11 expressly holds that cleanup and safety programs qualify as a special benefit so long as such services
12 are provided directly to the assesses, regardless of any secondary indirect or derivative benefit.
13 (*Dahms, supra*, 174 Cal.App.4th at pp. 721-722; *see also* Sts. & Hy. Code, §§ 36601(h)(2), 36615.5.)
14 The DCBID does; consequently, its services are the special benefit provided to assess properties.

15 Petitioner’s related arguments – that the DCBID does not “adequately describe” its special
16 benefits nor “identify” the special benefits provided by management services – flow directly from this
17 basic misunderstanding. The “special benefits” are the services provided to the assessed properties,
18 and those are “identified” when they are described. The Report goes further and describes the
19 derivative effects of the special benefits, i.e., enhanced commercial activity and quality of life, and then
20 demonstrates how these incidental effects also are conferred directly on the assessed properties.

21 Likewise, Petitioners argue that the DCBID failed to “consider Petitioners’ unique
22 circumstances,” failed to consider the differences between commercial and residential properties, and
23 failed to account properly for general benefits. (Opening Brief at p. 20-24.) Article XIID does not
24 require that any particular method be used to estimate the proportional special benefit provided to assess
25 properties. Nor does it require that the BID consider the specific characteristics of each parcel. Here,
26 the Engineer analyzed the DCBID and found that assessed properties (regardless of character) received
27 a special benefit proportional to the size of structures on the property. Petitioners provide no evidence
28 contradicting these findings, which are supported by 50 years of experience and studies of other BIDs.

1 Given the legal authority and evidence supporting the DCBID's formation, coupled with
2 Petitioners' lack of authority or evidence to the contrary, the City has met its burden of proof.
3 Moreover, to the extent Petitioners raise any concerns, the City could have addressed them during the
4 administrative review process. Because Petitioners failed to raise them earlier they cannot present them
5 now. Accordingly, Respondents respectfully request that the Court deny Petitioners' claims and uphold
6 the formation of the DCBID.

7 **II. FACTUAL & PROCEDURAL BACKGROUND**

8 **A. THE DCBID FORMATION.**

9 The City established the DCBID pursuant to the Property and Business Improvement District
10 Law of 1994 (Sts. & Hy. Code, §§ 36600 *et seq.*) and Article XIID of the California Constitution (part
11 of "Proposition 218"), which both allow for the creation of special assessment districts to promote
12 economic revitalization and physical maintenance of business districts. (AR 22-23¹; *see also* Cal.
13 Const., art. XIID; Sts. & Hy. Code, § 36601.) The City followed extensive procedure before
14 establishing the DCBID, and Petitioners do not raise any claims of procedural deficiencies in the BID's
15 formation.

16 To establish the DCBID, a California-registered professional engineer with over 50 years of
17 experience prepared a detailed 59-page Engineer's Report describing the BID's setting, purpose,
18 boundaries, proposed services, special benefits conferred on each parcel within the BID, and the
19 methodology in calculating the specific assessments for each parcel. (*See* AR 91.) A 58-page
20 Management District Plan providing details on the BID's implementation was also prepared. (AR 31-
21 90.) Based on those reports, property owners who would collectively pay almost 95 percent of the total
22 proposed assessment submitted ballots to the City Clerk confirming support for formation of the
23 proposed BID, far more than the 50% required. (AR 168; Sts. & Hy. Code, § 36621(a).) Upon receipt
24 of those petitions, the Engineer's Report and District Management Plan, the City initiated the formal
25 process to establish the BID (AR 255) and afforded all property opportunities to submit objections to
26 the BID's formation. (*Id.*)

27
28

¹ Citations to the administrative record will be in the following format: AR [page number].

1 **B. CHARACTERISTICS OF THE DCBID.**

2 The DCBID is located in downtown Los Angeles. (AR 9.) The BID's boundaries encompass
3 the commercial district of downtown Los Angeles. (AR 102.) The DCBID includes properties zoned
4 for commercial, mixed-use residential, and government uses. (*Id.*)

5 As detailed in the Engineer's Report, the BID will provide services through (i) Clean & Safe
6 Programs; (ii) Economic Development/Marketing Programs and (iii) Management of the DCBID. (AR
7 43-46; AR 97-101.). The Clean & Safe Programs comprise 58.54% of the total budget and will include
8 safety and maintenance services such as litter removal, graffiti/flyer/sticker removal, and crime
9 prevention activities. (AR 97-99; 116.) The Economic Development Programs comprise 22.47% of the
10 total budget and will include activities to promote the District's identity and improve marketability of
11 the BID's goods and services, including a quarterly newsletter, advertising, responses to media
12 inquiries, and the promotion of the District through a website and social media. (AR 99-101; 00116.)
13 The BID's remaining budget will be used for administration and management, including personnel
14 costs, office space rental, and the payment of City and operating fees. (AR 101; 116.)

15 The Report examines and determines the special benefit and the cost of the special benefit to
16 each parcel, and assesses each parcel only the proportional special benefit. (AR 97-101; 110-115.) The
17 Report finds that the services would be directly provided to the benefit of the assessed properties, and
18 that the services are provided directly to the assessed properties (e.g., owners, business operators, etc.).
19 (AR 42-44; 110-115.)

20 The management services provided by the DCBID were determined to all provide a special
21 benefit to the assessed properties. (AR 101.)

22 The improvements and activities are managed by a professional staff that requires
23 centralized management support. Management staff oversees the District's services which
24 are delivered seven days a week. Management staff actively works and advocates on behalf
25 of the District parcels to ensure that City and County services and policies support the
26 District. Included in this item are office expenses, professional services, organizational
27 expenses such as insurance, the cost to conduct a yearly financial review, City fees to
collect and process the assessments, a reserve for uncollectible assessments and
depreciation. A well-managed District provides necessary BID program oversight and
guidance that produces higher quality and more efficient programs. Management staff
expenses are allocated according to general accepted accounting job costing procedures
and are allocated to the specific areas in which staff works.

28 (AR 48-49.) Because the management services solely exist to direct benefits to the assessed

1 properties, none of the management services are general benefits. (*See* AR 111.) The
2 Management services were particular and distinct services provided directly and only to assessed
3 properties. (*See* AR 112.) Accordingly, the management services provided no general benefit as
4 none of the services or beneficial effects of those services are provided other than to the assessed
5 properties. (*Id.*)

6 The Engineer determined that a general benefit could “conceivably” be conferred by the other
7 services. The Engineer examined the general benefit to properties within the DCBID, the general
8 benefit to properties outside the DCBID, and the general benefit to the public at large.

9 With respect to properties within the DCBID, the Engineer noted that the DCBID provides
10 “activities and improvements that are designed and created to provide special benefits to each
11 individually assessed parcel” in the DCBID. (AR 112.) Accordingly, the Engineer found that the
12 services provided to such assessed parcels are a “special benefit,” not a “general benefit,” and so did
13 not provide a general benefit to parcels within the DCBID. (*Id.*)

14 With respect to properties outside of the DCBID, the Engineers noted that services would be
15 directed “solely for each of the individual assessed parcels” in the DCBID. (AR 112.) An adjacent
16 property that was not in another BID “conceivably” could receive a “spillover” benefit from the
17 DCBID. (*Id.*) If adjacent properties were within another BID the Engineer determined that the other
18 BID’s services were already provided the benefit that such “spillover” calculations would account for
19 and thus such properties would not receive a general benefit. (*Id.*)

20 Based on his experience the Engineer determined that determined that .12% of the DCBID’s
21 services and resulting beneficial effects could conceivably be provided to properties outside of the
22 DCBID. (AR 113-114.) Accordingly, the Engineer calculated that a general benefit equal to .12% of
23 the cost of the DCBID’s services could be provided to such properties. (AR 114.)

24 With respect to the public at large the Engineer first determined that the “public at large” are
25 those who do not receive special benefits from the DCBID. (AR 114.) If the person received services
26 that were a special benefit from the DCBID, those services are not a general benefit to that person from
27 the DCBID. (*Id.*) The Engineer determined that the Economic Benefit Programs would not provide
28 any general benefit to the public at large because they are tailored to the assessed properties and, based

1 on the Engineer's experience and relevant studies, would not be provided to the public and would not
2 provide any beneficial effect to the public at large. (*Id.*) Based again on the Engineer's "professional
3 experience of over 50 years as a Registered Civil Engineer and the results of previous studies," the
4 Engineer determined that it was conceivable that 1.4635% of the Clean and Safe Services would
5 provide a general benefit to the public at large and calculated a general benefit equal to 1.4635% of the
6 cost of the Clean and safe Services.

7 The Engineer's Report further provides a detailed summary of the methodology used to
8 calculate and apportion the assessments for special benefits to all parcels in the DCBID. (AR 107-109;
9 117-120.) The Engineer considered eight different general property activities (vacant and undeveloped;
10 integrated, attached parking; attached parking; unattached but commonly owned parking; unattached
11 parking; commercial property; residential parking; and public property). (AR 117.) Non-vacant
12 commercially-zoned, residentially-zoned,² and public use-zoned properties were all assessed based on
13 the square footage of the building on the parcel. (AR 107.) The Engineer found that public,
14 commercial, and residential properties all received the same level of services based on structure size,
15 not on the different uses of the properties. (*Id.*)

16 Parking structures and lots were given special treatment because "they have less daily pedestrian
17 traffic" and "receive a differing level of special benefit." (AR 108.) Vacant lots would be assessed as
18 a commercial, residential, or other activity once a structure on that lot received a certificate of
19 occupancy. (AR 109.) The Engineer determined that the square footage of structures on a parcel
20 indicated how much each parcel may draw on the BID's services. (AR 107-109.) The *Dahms* Court
21 upheld a BID apportioning costs based on similar geometric considerations because "not all parcels in
22 the [BID] are identical in size and other characteristics, [and] some will receive more special benefit
23 than others," so Pomona "had to devise a formula for determining the proportional benefit received by
24 each parcel." (*Dahms, supra*, 174 Cal.App.4th at pp. 720-21.) Nothing in the Record contradicts the
25 Engineer's findings.

26
27 ² Residentially-zoned properties in the DCBID are all zoned "R5," which provide for "multiple-
28 dwelling" residential uses such as apartments, condominiums, senior living facilities, hotels, and
similar uses. (*See* Los Angeles Municipal Code § 12.12. Many of the residentially-zoned properties
have a conditional commercial use (such as "ground floor" restaurants or stores.)

1 Additionally, the Engineer's Report explains that the BID includes two benefit zones (Zones 1
2 and 2) to account for varying levels of need in the District. (AR 105; 116.) This does not appear to be
3 controversial and Petitioners do not appear to challenge the differing zones, which are based on
4 different levels of services that will be provided to properties within the two different zones. (AR 98,
5 105 and 102.)

6 Based on the analysis and methodology summarized in the Engineer's Report, the engineer
7 made the required findings in support of the BID's formation. (AR 99-105; *see also* Cal. Const., art.
8 XIIID, § 4(a)-(c).)

9 **C. PETITIONERS' CHALLENGE TO THE DCBID'S FORMATION.**

10 Petitioners submitted ballots against the formation of the DCBID but provided no other
11 challenge or protest to the DCBID. (AR 293-294.) Petitioners did not appear at any hearing before the
12 City Council addressing the DCBID and did not provide any evidence or argument that the DCBID
13 was unconstitutional. (AR, *passim*.)

14 **III. PROCEDURAL ISSUES**

15 **A. STANDARD OF REVIEW.**

16 Under Article XIIID, § 4, "the burden shall be on the agency to demonstrate that the property
17 or properties in question receive a special benefit over and above the benefits conferred on the public
18 at large and that the amount of any contested assessment is proportional to, and no greater than, the
19 benefits conferred on the property or properties in question."

20 **B. BURDEN OF PROOF.**

21 Proposition 218 shifted the burden of demonstration to public agencies to demonstrate that
22 assessed BID properties will receive a special benefit over and above the benefits conferred on the
23 public at large and will only be assessed in an amount that is proportional to the special benefits that
24 those properties will enjoy. (Cal. Const., art. XIIID, § 4(e); *see also Silicon Valley Taxpayers' Assn.,*
25 *Inc. v. Santa Clara County Open Space Authority* (2008) 44 Cal. 4th 431, at 444-445; *Town of Tiburon*
26 *v. Bonander*, 180 Cal. App. 4th 1057, 1076 (2009).) Therefore, the Court employs independent review
27 of the Record to determine whether the assessment complies with Article XIIID. (*Silicon Valley* at
28 444-445.)

1 Thus, although the City's decision is reviewed *do novo*, the analysis must begin with a
2 presumption that the City's Council's findings are correct should the City present a *prima facie* case to
3 support its decision. (*Dahms*, supra, 174 Cal.App.4th at p. 719; see also *Cal. Farm Bureau Federation*
4 *v. State Water Resources Control Bd.* (2011) 51 Cal.4th 421, 436 [holding unlike the burden of proof,
5 the burden of production "may shift between the parties," and once the party with the initial burden
6 "produces evidence sufficient to make its prima facie case, the burden of producing evidence shifts to
7 the other party to refute that prima facie case"]; *Sargent Fletcher, Inc. v. Able Corp.* (2003) 110
8 Cal.App.4th 1658, 1663-64 [same].)

9 In any event, the Administrative Record amply supports the City's decision to establish the
10 DCBID. The Engineer's Report, based on over 50 years of experience, determined an appropriate
11 amount for the DCBID's general benefit and apportioned an appropriate assessment for special
12 benefits.

13 **C. ADMINISTRATIVE REMEDIES.**

14 "As a general rule, a party must exhaust available administrative remedies as a prerequisite to
15 seeking relief in the courts." (*Williams & Fickett v. County of Fresno* (2017) 2 Cal. 5th 1258, 1264.)
16 "We have explained that "[t]he exhaustion doctrine is principally grounded on concerns favoring
17 administrative autonomy (i.e., courts should not interfere with an agency determination until the agency
18 has reached a final decision) and judicial efficiency (i.e., overworked courts should decline to intervene
19 in an administrative dispute unless absolutely necessary)." (*Id.* at 1268 (*citations omitted*)). An
20 exhaustion requirement is inferred if not explicitly set forth in a statutory scheme. (*Id.* at 1271.)

21 Exhaustion of administrative remedies protects "the public agency's opportunity to receive and
22 respond to articulated factual issues and legal theories before its actions are subjected to judicial
23 review." (*N. Coast Rivers All. v. Marin Mun. Water Dist. Bd. of Dirs.* (2013) 216 Cal. App. 4th 614,
24 623, *citing Evans v. City of San Jose* (2005) 128 Cal. App. 4th 523, 535.) The "exact issue" must be
25 presented to the administrative body, and "anything less would enable litigants to narrow, obscure, or
26 even omit their arguments before the final administrative authority because they could possibly obtain
27 a more favorable decision from a trial court." *Id.* The Exact Issue Rule is also a "judicial prerequisite"
28 to relief. *Id.* at 624.

1 Thus, “[t]he doctrine of exhaustion of administrative remedies requires a party to use all
2 available agency administrative procedures for relief and to proceed to a final decision on the merits
3 by that agency before he may resort to the courts.” (*Barnes v. State Bd. of Equalization* (1981) 118
4 Cal. App. 3d 994, 998.) “[M]atters of both law and fact must be first presented [. . .] before resort to
5 the courts so that the board may be afforded the opportunity to rectify any mistake in tax collection.”
6 (*Id.*)

7 An administrative review process governs the establishment of BIDS. Under Gov. Code §
8 53753:

9 At the time, date, and place stated in the notice mailed pursuant to
10 subdivision (b), the agency shall conduct a public hearing upon the
11 proposed assessment. At the public hearing, the agency shall consider all
12 objections or protests, if any, to the proposed assessment. At the public
hearing, any person shall be permitted to present written or oral testimony.
The public hearing may be continued from time to time.

13 The hearing to establish the DCBID occurred on June 7, 2017. (AR 260.) Petitioners do not contest
14 that they were provided notice of the hearing. Petitioners provided no evidence or argument that the
15 DCBID was improper at that hearing, or at any other time. Petitioners only submitted their “no” vote
16 to the establishment of the BID.

17 Thus, although Petitioners voted against the establishment of the DCBID and thus can contest
18 the establishment of the BID, Petitioners failed to present **any** evidence or **any** legal basis to challenge
19 the DCBID. Consequently, Petitioners are prohibited from raising legal or evidentiary challenges to
20 the DCBID.

21 Here, the need to exhaust administrative remedies is particularly strong. Many of Petitioners
22 objections here are technical (i.e., that the Engineer’s Report should have contained information that is
23 missing) and could have easily been addressed had Petitioners raised them through the administrative
24 review process. (*See, e.g.* Opening Brief at p. 9: (“The Report Does Not Adequately Describe . . .
25 Special Benefits.”)) Likewise, Petitioners generally do not argue that the City relied on an Engineer’s
26 Report that is wrong, but that it lacks “solid, credible evidence” to support its conclusions. (*See, e.g.*,
27 Opening Brief at p. 24, ll. 19-25.) Again, had Petitioners raised these objections during the
28 administrative review process, the City could have addressed them. Petitioners should not be able to

1 raise concerns here that the City could have addressed through the administrative process.

2 **IV. PETITIONERS IGNORE CONTROLLING AUTHORITY UNDER WHICH THE**
3 **DCBID IS UNDOUBTEDLY CONSTITUTIONAL.**

4 Petitioners' arguments are largely irrelevant because they completely ignore *Dahms*, a
5 controlling case from the Second Appellate District.³ Not only is *Dahms* controlling here, but the
6 California Supreme Court specifically asked the *Dahms* panel to consider whether a BID was
7 constitutional under *Silicon Valley*, *Dahms* did so, and review was then denied by the Supreme Court.
8 (See *Dahms* at 711.) Petitioners' failure to even mention *Dahms* renders the Opening Brief largely
9 irrelevant.

10 Under *Dahms* the DCBID is constitutional. *Dahms* held that when services were provided
11 directly to the assessed properties, 100% of the services were special benefits to the assessed properties.
12 This correctly applied *Silicon Valley*'s holding that general benefits flow to the public at large. "Public
13 at large" means "[n]ot limited to any particular ... person." (*Silicon Valley, supra* at 455.) The
14 services in *Dahms*, unlike the parkland in *Silicon Valley*, was limited to particular persons – the assessed
15 properties in the BID. (*Dahms* at 727). The services were provided directly to the assessed properties;
16 this limited the services to assessed properties, and so the services are a special benefit under *Silicon*
17 *Valley*. *Dahms* explained that the BID therein:

18
19 is nothing like the district at issue in SVTA. In SVTA, all seven of the
20 putative special benefits were merely the alleged effects of the two services
21 directly funded by the assessments, namely, the acquisition and
22 maintenance of open space land. In contrast, the special benefits conferred
23 by the PBID are not mere effects of the services funded by the assessments.
Rather, the PBID's services themselves constitute special benefits to all of
the assessed parcels. The assessments directly fund security services,
streetscape maintenance services, and marketing and promotion services for
the assessed parcels. SVTA in no way suggests that those services are not
special benefits."

24 (*Id.* at p. 726.) (Accord, Streets & Highways Code §§ 36601(h)(2), 36615.5, which recognizes
25 that special benefits may have incidental or collateral effects that benefit property owners or persons

26
27 ³ With conflicting precedent from different appellate districts, this Court is bound by the precedent
28 from the appellate district in which it sits. (See *Prescod v. Unemployment Insurance Appeals Bd.* (1976)
57 Cal.App.3d 29, 39.) No precedent even conflicts with *Dahms*; however, should Petitioners attempt
to raise a conflict, the City respectfully argues that such a conflict must be resolved by following
Dahms, not the purportedly conflicting case from a different district.

1 not assessed.)

2 The DCBID differs materially from the BID in *Dahms* only in quantifying a general benefit that
3 is not assessed against DCBID properties, while the BID in *Dahms* assessed 100% of its costs against
4 the BID's properties. (See *Dahms* at 724-725.) Otherwise, the DCBID is virtually identical; safety
5 services, cleaning services, marketing and economic development services, and administration services
6 are provided directly to assessed properties. (AR 443-49; 110-115; see *Dahms* at 713.) Similarly, the
7 costs of the DCBID special benefit are apportioned based on geometric considerations, after accounting
8 for parking. (AR 107-109; see *Dahms* at 720-721.) Therefore, under both *Dahms* and *Silicon Valley*
9 the DCBID properly could assess all of the costs of its services against assessed properties.

10 Perhaps because Petitioners ignore *Dahms*, the Opening Brief misapplies Article XIID's
11 constitutional requirements and *Silicon Valley*. In *Silicon Valley* the Court addressed a district providing
12 public parks and open spaces generally to any user. (*Silicon Valley, supra* at 437.) Because the open
13 spaces were not provided directly to the assessed properties, the benefit was not "limited" to assessed
14 properties by the nature of the district or its improvements. (*Id.* at 452, fn. 8.)

15 Accordingly, the district attempted to separate special from general benefits by attempting to
16 estimate the ways in which the open space benefited assessed properties more or differently than the
17 general public. (See *Beutz v. County of Riverside*, 184 Cal.App.4th 1516, 1533 (2010).) The district
18 looked to secondary "effects" (see *Dahms, supra* at 725) from this open space to show that a special
19 benefit was provided to assessed properties; however, it failed to consider, let alone provide evidence,
20 that these secondary effects benefited assessed properties more than the general public. (*Silicon Valley,*
21 *supra* at 453-454.) *Silicon Valley* explicitly addressed and distinguished districts like the DCBID:

22 We do not believe that the voters intended to invalidate an assessment
23 district that is narrowly drawn to include only properties directly
24 benefiting from an improvement. Indeed, the ballot materials reflect
25 otherwise. Thus, if an assessment district is narrowly drawn, the fact that a
26 benefit is conferred throughout the district does not make it general rather
27 than special. In that circumstance, the characterization of a benefit may
28 depend on whether the parcel receives a direct advantage from the
improvement (e.g., proximity to a park) or receives an indirect, derivative
advantage resulting from the overall public benefits of the improvement
(e.g., general enhancement of the district's property values).

(*Id.* at 452, fn. 8 (emphasis added).)

1 Thus, the second order effects from an improvement do not necessarily show any special benefit
2 or general benefit. (*Id.*; *Dahms, supra* at 723.) The second order effects could all benefit the public
3 generally and be a general benefit, or be a special benefit solely because the improvement is provided
4 directly to the assessed properties the improvement is a general benefit. (*Silicon Valley, supra* at 452,
5 fn 8.) As *Dahms* held, the issue is to whom the benefits are conferred, not the nature of the benefit.
6 (*Dahms, supra* at 726.)

7 Petitioners cite two appellate cases, neither of which support their positions. One, *Beutz*, 184
8 Cal.App.4th at 1537, explicitly agreed with the holding of *Dahms*. The other, *Golden Hill*
9 *Neighborhood Assn., Inc. v. City of San Diego*, 199 Cal. App. 4th 416, 438 (2011), held a district
10 unconstitutional because it “did not attempt to separate and quantify the general and special benefits,”
11 literally untrue for the DCBID. Moreover, *Golden Hill* addressed a district that did not provide services
12 directly to assessed properties. (*Id.* at 436-439.)

13 *Beutz*, 184 Cal.App.4th at 1533, is instructive. *Beutz* like *Silicon Valley* considered a district that
14 provided parkland generally to all. The district, like that in *Silicon Valley*, attempted to prove it
15 provided a special benefit by examining the secondary effects of the parkland on assessed properties.
16 As in *Silicon Valley*, the district failed to even analyze how assessed properties “will use or benefit
17 from the parks in a different manner” than other persons, or whether assessed properties near the
18 parkland could reasonably be expected to benefit as much as assessed properties several miles away.
19 (*Beutz, supra* at 1533-1534.) In short, the district failed to make any attempt, let alone provide
20 evidence, to show how these secondary effects were conferred on assessed properties, and instead
21 merely assumed it to be true. (*Id.*)

22 The DCBID is constitutional under *Beutz*. *Beutz* found the district unconstitutional because the
23 district did not provide “services specifically intended for assessed parcels [that] concomitantly confer
24 collateral general benefits to surrounding properties.” (*Beutz, supra* at 1537.) A district provides a
25 special benefit if services are intended for assessed parcels, regardless of whether collateral (i.e.,
26 secondary) effects provide a general benefit. And here, unlike in *Beutz*, the DCBID’s services are
27 intended for the assessed properties. (AR 42.) “The Safety Program will provide security services for
28 the individual assessed parcels located within the District.” (AR 97.) “The clean team will only provide

1 service to assessed parcels within District boundaries.” (AR 98.) And the management services are
2 provided only to manage the DCBID on behalf of assessed properties. (AR 101.)

3 Thus, under *Dahms* (and all of the cases cited by Petitioners) the DCBID satisfies the
4 “separation” requirement of Article XIID. The DCBID properly separates its special benefit from its
5 general benefit. The DCBID’s services are intended for, and so conferred directly and only to, assessed
6 properties and so are a “special benefit” over and above that to the general public, to whom nothing is
7 provided except derivatively, through the benefit to the assessed properties. The Engineer’s Report
8 found it “conceivable” that some services could be provided to the general public and provided a
9 reasonable estimate of such services.⁴ The Record thus supports the DCBID’s calculation of special
10 and general benefits (and indeed would support assessing even more against the properties in the
11 DCBID).

12 Likewise, the DCBID assesses each parcel no more than the proportional cost of the special
13 benefit conferred on that parcel, based on geometric considerations approved by every court that has
14 considered them. *Dahms* held that it was reasonable to estimate the services provided to parcels solely
15 based on geometric considerations such as lot size, street frontage, and structures for each property.
16 (*Dahms, supra* at 721. *Tiburon, supra*, also supports the DCBID’s methodology. In *Tiburon* the district
17 apportioned the cost of the special benefit based on the cost of providing that benefit in three different
18 zones. (*Tiburon* at 1081.) The district assessed some properties a much higher amount with any
19 analysis of the proportional special benefit provided to those properties. (*Id.* 1082.) But “lot size,
20 length of street frontage with overhead wires, and/or some combination of similar factors are proper
21 considerations in determining each property’s relative special benefit. . .” (*Id.* at 1084.) Geometric
22 considerations such as the size of structures on a property were the only factors considered by the
23 *Tiburon*.

24 Here, the Engineer determined that just such a geometric consideration, the size of structures
25

26 ⁴ The City’s burden is to show that the DCBID assesses “no more than” the proportional share of the
27 DCBID’s costs for its special benefit. Under *Dahms*, 100% of the DCBID’s services are a special
28 benefit, and the DCBID could have assessed 100% of these costs. By cautiously estimating a
“spillover” effect and not assessing for a “conceivable” a general benefit, the DCBID perhaps assesses
less than that proportional cost; however, nothing in the record shows this method would assess more
than such costs.

1 on a property, was the most reasonable basis to estimate the services that would be delivered. Costs
2 therefore were apportioned based on the square footage of structures on assessed properties, regardless
3 of the specific character of the property. This slightly differs from the methodology in *Dahms* (which
4 was based on combination of lot size, “street frontage” and structure size), but according to the Engineer
5 better accounts for the circumstances of the DCBID, which addresses the densest parts of Los Angeles
6 with the largest buildings. At a minimum there is no evidence nor even any basis for speculation to the
7 contrary. It is eminently reasonable to believe that a district based among the high-rise buildings of
8 Downtown Los Angeles would provide services based on the size of those buildings. The City certainly
9 meets its burden of properly apportioning the costs of special benefits.

10 Thus, the DCBID’s apportionment methodology is reasonable. Under *Dahms* and *Tiburon* an
11 assessment district can apportion special benefits on fundamental characteristics of a property such as
12 the size of structures on that property. No case requires the consideration of specific characteristics
13 such as “low-income housing.” The Record contains ample evidence that the size of structures
14 reasonable reflects the services that will be provided to assess properties. The City meets its burden of
15 proof.

16 Petitioners’ failure to at least address the controlling authority is perplexing and makes the
17 Opening Brief virtually irrelevant. Nevertheless, the City addresses Petitioners’ arguments as they are
18 presented.

19 **A. THE DCBID PROPERLY DETERMINED THE SPECIAL BENEFIT.**

20 A “special benefit” is a “particular and distinct benefit over and above general benefits
21 conferred on real property.” (Article XIIID, §2(i).) Thus, whether a benefit is “special” or “general”
22 does not depend on what benefit the BID provides, but on to whom the benefit is conferred. A benefit
23 is conferred to the general public if “all people . . . will benefit broadly, generally, and directly” from
24 the benefit, and “special” if it is “tied” or “connected” to assessed properties. (*Silicon Valley, supra* at
25 453; *see also, e.g., Tiburon*, 180 Cal. App. 4th at 1078.) Thus, when a BID provides services directly
26 to assess properties, those services are the special benefit. (*Dahms* at 727.) The derivative or indirect
27 effects of special benefits conferred on assessed properties are not a general benefit. (Sts. & Hy. Code,
28 §§ 36601(h)(2), 36615.5.)

1 The DCBID's services surely are a special benefit, and nothing indicates the DCBID
2 unreasonably estimated the amount of general benefit that would be provided. Petitioners, perhaps
3 because they do not apply *Dahms*, analyze the special and general benefits incorrectly and provide
4 arguments that are more irrelevant than wrong. The City addresses them below.

5 **1. PETITIONERS MISSTATE THE RECORD TO ARGUE THE DCBID**
6 **IMPROPERLY ASSESSES FOR A GENERAL BENEFIT.**

7 The record shows that the DCBID properly determined the special benefit conferred on assessed
8 properties. The special benefit is the services (with any resulting secondary effects) conferred on the
9 assessed parcels.

10 Petitioners argue that services will increase commercial activity and enhance safety and
11 cleanliness, and therefore provide "general economic and quality-of-life enhancements" which are a
12 general benefit. (Opening Brief at pp. 15-16.) But here Petitioners misstate the Engineer's Report.
13 Petitioners quote the Report as providing that "District programs [will] . . . provide an enhanced sense
14 of safety. . . ." (Opening Brief at p. 15.) The Report actually finds that "[r]esidential and mixed-use
15 residential parcels **benefit from District programs that provide** an enhanced sense of safety,
16 cleanliness and a positive user experience which in turn enhances the business climate and improves
17 the business offering and attracts new residents, businesses and District investment." (AR 97.) The
18 Record shows that all services are conferred on assessed properties, and so are the DCBID's special
19 benefit. (AR 42.)

20 This is materially different from Petitioners' mischaracterization. The Engineer did not find
21 that the special benefit here was "enhanced safety;" instead, the Engineer found that the benefit was
22 the service itself, i.e., the DCBID's safety programs. (AR 97.) This is a special benefit under *Dahms*,
23 *Beutz*, and *Silicon Valley*. "Enhanced safety" is an effect of this benefit, and also is provided directly
24 and only to the assessed properties, but the services themselves are the benefit conferred by the DCBID.
25 Just so for all the DCBID's services.

26 Moreover, this concern, based apparently on the wording of the Engineer's Report, is exactly
27 the sort of concern that could have been addressed through the administrative review process. Had
28 Petitioners raised this exact concern during the City's consideration of the DCIBD (as they were

1 required to do), the City certainly could have provided clarifications to meet Petitioners' needs here.
2 To the extent they challenge the Report's actual findings, the City could have produced additional
3 evidence to support those findings. The DCBID should not fail because Petitioners refused to present
4 their concerns in a correctible manner. The City believes this same issues applies to all of Petitioners'
5 concerns, but will not address it specifically again.

6 **2. THE ENGINEER PROPERLY DETERMINED THE SPECIAL AND**
7 **GENERAL BENEFIT CONFERRED BY THE DCBID.**

8 The Record amply supports the Engineer's determinations. Petitioners speculate that the
9 Engineer made mistakes, but the Report is based on the Engineer's experience and studies of BID
10 services. This evidence overcomes Petitioners' speculation that the Report might be wrong.

11 With respect to the public at large, the Engineer that none of the economic development services
12 would benefit the general public, and that no more than 2.5 % of the DCBID's clean and safe services
13 would provide a general benefit to the public at large. (AR 113-114.) The Report explicitly analyzes
14 the extent to which DCBID services could be conferred on the public at large. (AR 112-114.) Based
15 on the Engineer's experience, DCBID services conceivably could be conferred on properties adjacent
16 to the DCBID and not in another BID and to persons (both inside and outside of the DCBID) who do
17 not receive a special benefit (i.e., who do not receive services directly)⁵ from the DCBID. (AR 112-
18 114.) The Engineer explicitly found, based on his experience, the nature of the DCBID, and the nature
19 of the DCBID's services, that no general benefits would be provided otherwise. (AR 112-114.) This
20 meets the City's burden of proving that the public at large would be conferred, as a general benefit, no
21 more than 2.5% of the DCBID's clean and safe services.

22 Petitioners speculate that the DCBID provides a general benefit to properties in the DCBID and
23 to properties in adjacent BIDs. This speculation is unsupported by both the law and the Record. The
24 DCBID provides its services directly, and only, to the assessed properties. (AR, 42; 91-101; 110-112.)
25

26 ⁵ Petitioners argue that the Engineer improperly found that those persons provided a special benefit
27 from the DCBID's services do not receive a general benefit from those services. The City cannot
28 follow the logic of this argument, as by definition if a person receives a specific service as a special
benefit, such a person does not receive the same specific service as a general benefit. That service is
either a special benefit or a general benefit, not both. In any event, the Report shows to what extent the
public receives a benefit, and so the City meets its burden of proof.

1 This is a “direct advantage” conferred on and “limited to” assessed properties and so is a special, not
2 general, benefit. (*Silicon Valley* at 455 at fn. 8.) All services will be provided directly to and only for
3 the benefit of the assessed properties. (AR 42.) Thus, under *Dahms*, 174 Cal.App.3d at 722, the
4 assessed properties are receiving a special benefit equal to the cost of such services. The same services
5 cannot provide a special benefit and general benefit to the assessed properties; they are either “special”
6 (directed to properties over and above the benefit to the general public), or general (not so). Moreover,
7 the Engineer found that properties in the DCBID would only receive a special benefit and no general
8 benefit, and so regardless of *Dahms*’ holding the Record here meets the City’s burden of proof.

9 Likewise, the DCBID does not provide a benefit to adjacent properties in other BIDs. The
10 Engineer found that because properties in other BIDs received their own similar services, the DCBID
11 would provide no such services (or resulting enhancements) to such properties. A property in another
12 BID is “already receiving special benefit from [that BID’s] activities and thus not generally benefitted
13 from the Downtown Center PBID activities.” (AR 112-113.) This is a succinct way of stating such
14 properties already receive clean and safe and economic development services from their own BID and
15 are not likely to need or receive any such from the DCBID. The Engineer’s determination is supported
16 by 50 years of experience, and nothing in the record contradicts it. Therefore, the DCBID is not only
17 constitutional under all of the relevant case law (none of which even hint that a BID must provide a
18 general benefit to adjacent properties), but because the Record supports the Engineer’s conclusion that
19 no benefit will be provided to adjacent properties.

20 **3. ENHANCED SAFETY AND SIMILAR EFFECTS CAN BE A SPECIAL**
21 **BENEFIT IF PROVIDED DIRECTLY TO ASSESS PROPERTIES.**

22 Petitioners argue repeatedly that “enhanced safety,” “increased commercial activity,” and
23 similar effects of the DCBIDs services can only be a general benefit and so cannot be a special benefit.
24 (*See, e.g.,* Opening Brief at p. 15 (“quality of life enhancements do not constitute special benefits.”)).
25 But nothing in the law supports that proposition. Such effects certainly can be a special benefit. (*Silicon*
26 *Valley, supra* at 452-455.) These are a special benefit to the extent they are conferred on assessed
27 properties differently and more than to the public at large. (*Silicon Valley; see also Dahms.*) In *Beutz*
28 and *Golden Hill* the districts failed because they failed to even analyze whether these secondary effects

1 were provided specially to assess properties, not because these secondary effects are always a general
2 benefit. The DCBID suffers from no such problem as the Engineer did analyze the general benefit.

3 Petitioners appear to misread (and therefore misapply) *Beutz* and *Golden Hill*, two cases (like
4 *Silicon Valley*) addressing at least in part assessments for open space. In both, the supporting
5 Engineer's Report assumed without analysis the amount of the general benefits conferred by an
6 improvement. (See *Beutz* at 1522 ("the Report assumes—without supporting evidence or analysis—
7 that the general benefits of the Master Plan will be 'offset' by the County's expenditures. . ."); *Golden*
8 *Hill* at 438 ("the engineer's report here did not attempt to separate and quantify the general and special
9 benefits that the proposed services and improvements would confer. . .") Thus, although both refer to
10 "solid and credible evidence," such evidence was never at issue as the two districts never attempted to
11 quantify and separate special benefits from general benefits.

12 *Tiburon* settled this issue to the extent there remains any doubt. In *Tiburon*, a district intended
13 to provide underground utility lines to assessed properties. (*Tiburon, supra* at 1063.) The district
14 assessed 100% of the cost of the utility lines as a special benefit. (*Id.* at 1067-1068.) The engineer's
15 report found that the utility lines would provide three beneficial effects: "improved aesthetics, increased
16 safety, and improved service reliability." (*Id.* at 1078.) But these beneficial effects (virtually identical
17 to the DCBID's "economic and quality of life enhancements") were not a general benefit, but a means
18 of allocating the special benefit to assessed properties. (*Id., passim.*) The entire cost of the utility
19 improvement was a special benefit regardless of the nature of the secondary effects the improvement
20 provided. (*Id.* at 1078.) Thus, a BID does not provide a general benefit merely because its improvement
21 provides something like "enhanced quality of life."

22 Here, the DCBID's improvement are the services it provides. These are provided directly to
23 assessed properties. (AR at 42.) The Engineer explicitly analyzed and determined what the general
24 benefits were. (AR 112-114.) Thus, unlike in *Golden Hill* and *Beutz* the Engineer did not assume,
25 without analysis, the amount of general benefits from the DCBID's services. The Engineer analyzed
26 these issues and provided evidence to support his determinations. (*Id.*)

27 Moreover, the Engineer found based on his experience and the structure of the services that
28 these secondary effects, like the services themselves, would flow to the assessed properties based on

1 structure square footage, except for a small amount of benefit that would go to the general public. (AR
2 *passim*.) There is nothing contrary in the record. Further, it does not strain common sense to believe,
3 as the Engineer found, that when properties in a specific area are given specific services intended solely
4 to benefit those properties, then the BID will confer the overwhelming majority of secondary effects
5 on such properties.

6 **4. CALIFORNIA LAW PROPERLY DIRECTS THAT DERIVATIVE AND**
7 **INDIRECT EFFECTS OF A BID'S SERVICES ARE NOT A GENERAL**
8 **BENEFIT.**

9 Petitioners complain the DCBID does not account for derivative and indirect effects resulting
10 from benefits conferred on the assessed properties. (*See, e.g.*, Opening Brief at p. 16 ("the programs
11 are intended to broadly benefit all..." (*sic*)). As above, the record says otherwise. The programs
12 literally are intended only for assessed properties, and so are a special benefit regardless of any
13 secondary effects from the services. (AR 42, 97-101.) Moreover, the Engineer explicitly analyzed the
14 beneficial effects of the DCBID, and the Engineer determined these largely would be provided directly
15 to the assessed properties because they resulted from services being provided directly to assess
16 properties. (AR 97-101, 111-113.) The secondary effects of the services were conferred on the general
17 public in the same amount as the services themselves, i.e, very minimally.

18 Moreover, these derivative effects are not general benefits. (Sts. & Hy. Code, §§ 36601(h)(2),
19 36615.5.) Petitioners disregard these statutes, arguing they are unconstitutional because the legislature
20 "cannot transcend the meaning intended by the constitutional framers;" however, Petitioners provide
21 absolutely no reason to think the statutes do so.

22 The law supports the statutes. Article XIID itself requires that the district determine the special
23 benefit "conferred" on assessed properties, not the special benefit "received" by the assessed properties.
24 An improvement is "conferred" on the assessed properties if the assessed properties are intended to
25 benefit directly from the improvement, regardless of any derivative effects of that improvement. Even
26 the derivative benefit of an improvement directed and intended for an assessed property is "conferred
27 on" the assessed property, not the general public. The general public may "receive" some indirect
28 benefit from the improvement, but the district does not "confer" that benefit on the public.

1
2
3 Case law agrees. *Silicon Valley* explicitly finds that a “direct benefit” is different from a
4 “derivative benefit.” (*Silicon Valley* at 453, fn8.) *Dahms* and *Tiburon* both find that a derivative effect
5 received by the general public is not a general benefit. (*Dahms* at 726; see *Tiburon* at 1065 and 1088.)

6 These statutes seem unassailable. All special benefits necessarily assist the public good, but
7 that does not make a special benefit a general benefit. (See *City of Saratoga v. Hinz* (2004) 115
8 Cal.App.4th 1202, 1225 (“The fact that this project does not confer any general benefit for assessment
9 purposes does not detract from the inherently public nature of the project.”) The statutes appear to
10 codify a common sense, reasonable reading of Article XIID. One could speculate endlessly over
11 putative secondary beneficial effects an improvement could have to the general public. But such
12 secondary effects do not necessarily show to whom a benefit is given within the meaning of Article
13 XIID, which requires an examination of benefits “conferred,” not effects “received.”

14 Therefore, the statutes are an appropriate clarification of an ambiguous constitutional provision,
15 and the courts should defer to them. They provide yet another reason to uphold the SPBID. The SPBID
16 properly identified and accounted for its special benefit.

17
18 **B. THE CITY PROPERLY ASSESSED THE REASONABLE COST OF THE**
19 **PROPORTIONAL SPECIAL BENEFIT CONFERRED ON ASSESSED**
20 **PROPERTIES.**

21 Petitioners challenge the apportionment of the cost of the special benefit to the assessed
22 properties (“the proportional special benefit conferred on that parcel”). (See Article XIID, § 4.)
23 Petitioners do not clearly address this issue. Instead of addressing the apportionment of costs to the
24 assessed properties, Petitioners largely repeat their arguments that a general benefit is improperly
25 assessed. (Opening Brief at 22-23.) But that is already considered when the special benefit itself is
26 determined and is thus irrelevant to proportionality. Otherwise, Petitioners largely argue that the
27 DCBID lacks “solid, credible” evidence for its apportionment (See Opening Brief at 20, 21-22 and 24);
28 however, exactly this sort of evidence (the conclusions of an experienced engineer) amply meets the

1 City's burden of proof.

2 The City meets this burden. The Report finds that all non-vacant properties (including
3 Petitioners') benefit in the same manner from the BID's services. (AR 167.) All properties will be
4 provided safety and economic development services proportional to the square footage of structures on
5 the properties. (*Id.*) The resulting beneficial effects also are provided based on the size of structures
6 on the properties. (*Id.*) This is a reasonable method of estimating the proportional benefit conferred
7 on an assessed parcel, supported by the Engineer's 50 years of experience. (*See Dahms* at 723.) There
8 is no reason to think that the DCBID, in an area made up almost entirely of huge, multiple-story
9 buildings, would largely provide services based on the size of those buildings. The DCBID assesses
10 the amount of this proportional benefit. Nothing in the record (or in Petitioners' Request for Judicial
11 Notice) contradicts these facts.

12 Petitioners raise two issues that the City addresses in more detail below.

13 **1. LOW INCOME HOUSING.**

14 Petitioners speculate that they will not benefit "to the extent [of] commercial and other
15 residential properties," but no evidence supports this argument. (Opening Brief at p. 20.) No evidence
16 supports Petitioners' speculation that they will receive fewer services, or the secondary beneficial
17 effects of the DCBID's services. (*See* Opening Brief at 20.) Indeed, Petitioners never even challenge
18 that they will receive the same proportional services as other assessed properties, but instead merely
19 speculate it need not be true.

20 Moreover, there is no reason that the resulting secondary effects (such as enhanced quality of
21 life) do not proportionally flow to Petitioners' properties as much as to other properties. Nothing
22 indicates Petitioners cannot, or even did not, raise rents for their tenants in response to improved
23 economic conditions in the DCBID. Rents for "low income" tenants rise all the time, and the amount
24 of subsidized rents such as Section 8 vouchers increases continually.

25 Further, Petitioners presumably wish to provide as enjoyable an experience as possible.
26 Petitioners may not raise their rents, but Petitioners certainly could more easily market itself to such
27 persons and provide a better experience to such persons. Nothing indicates this benefits Petitioners
28 less than the DCBID services benefit other parcels.

1 Finally, the proper consideration here is whether the DCBID's special benefit is conferred on
2 Petitioners, not whether Petitioners actually take advantage of it. Services and the resulting
3 enhancements are conferred regardless of whether Petitioners take advantage of such benefits. The
4 owner of "for-profit" apartment complex, or a business or commercial building, could also refuse to
5 take advantage of the enhanced opportunities. The DCBID's benefit is nevertheless conferred.

6 7 **2. RESIDENTIAL PROPERTIES.**

8 At various points Petitioners argue that the DCBID does not properly account for differences
9 between various uses of properties when apportioning the costs of special benefits. (*See, e.g.*, Opening
10 Brief at 24.) But the Engineer found that:

11 [s]ervices and improvements provided by the District are designed to
12 provide special benefits to the retail, cultural, religious, parking, office,
13 publicly-owned transit, publicly-owned library, publicly-owned parks,
14 publicly-owned office, residential and mixed-use residential parcels. The
15 best way to determine each parcels proportionate special benefit from the
District programs is to relate each parcel's building square footage to every
other parcel's building square footage, and/or when applicable, land square
footage, plus applicable, assessable parking square footage for each parcel.

16 (AR 107.) Thus, despite the different uses of properties, the Engineer found that "building square
17 footage" was the best way to relate district programs to each parcel. Nothing in the record contradicts
18 the Engineer's conclusions.

19 Petitioners speculate that the report wrongly "assumes" that "residential parcels" will receive
20 the same proportional benefit as "more business-oriented" parcels, but that is not true. The Engineer
21 found that residential and commercial properties, just like government properties, receive services
22 proportional to the size of structures on the properties. (AR at 106-109.) Nothing in the record indicates
23 that an apartment building will receive or require fewer services than an office building, or any other
24 residential or commercial building. And indeed, the opposite could easily be true, as apartments are
25 used 24 hours a day, while an office building generally would be used only during business hours.

26 One could argue endlessly over various ways different properties could conceivably use the
27 DCBID's services, but the City's burden is to show that the DCBID has reasonably estimated the
28 benefit that will be provided. (*Dahms.*) The Engineer found that, regardless of the use of the property,

1 the size of structures on the building are the most appropriate way to estimate the amount of services
2 provide. The City meets its burden of proof here.

3 **V. CONCLUSION**

4 Based on the foregoing, the City respectfully requests that the Court deny Petitioners' Petition
5 in full. The City met its burden to demonstrate that the DCBID assesses properties only for the special
6 benefit provided by the DCBID, and that it assesses each property proportionally to the special benefit
7 conferred on that property. Furthermore, Petitioners failed to contest the formation of the DCBID with
8 **any** argument or evidence during the administrative review process, and so cannot do so here. The
9 Court should rule in favor of the City based solely on Petitioners' failure to exhaust administrative
10 remedies.

11 Dated: 8/7/18

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1 **PROOF OF SERVICE**

2 I, Cynthia Marchena, declare as follows: I am employed in the County of Los Angeles, California. I
3 am over the age of 18 and not a party to the within action. My business address is 200 N. Main St.,
4 Rm. 920 C.H.E., and Los Angeles, California 90012.

5 On August 7, 2018, I served the document(s) described **RESPONDENTS' OPPOSITION**
6 **BRIEF**, on the interested parties in this action by enclosing the document(s) in a sealed envelope
7 addressed as follows:

8 REUBEN RAUCHER & BLUM
9 Stephen L. Raucher, Esq.
10 Email: sraucher@rrbattorneys.com

11 Hana Kim, Esq.
12 Email: hkim@rrbattorneys.com

Attorneys for DCBID:
Colantuono, Highsmith & Whatley, PC
Holly Whatley, Esq.
Email: hwhatley@chwlaw.us

Pamela Graham, Esq.
Email: pgraham@chwlaw.us

13 ☐ **MAIL** - I caused such envelope to be deposited in the United States mail at Los Angeles,
14 California, with first class postage thereon fully prepaid. I am readily familiar with the business
15 practice for collection and processing of correspondence for mailing. Under that practice, it is
16 deposited with the United States Postal Service on that same day, at Los Angeles, California, in the
17 ordinary course of business. I caused such envelope to be deposited in the mail at Los Angeles,
18 California, with first class postage thereon fully prepaid.

19 ☒ **E-MAIL TRANSMISSION** - I caused such document to be transmitted in a PDF format to
20 the offices of the addressee via e-mail on the date specified above.

21 ☐ **Federal** - I declare that I am employed in the office of a member of the bar of this court at
22 whose direction the service was made.

23 ☒ **State** - I declare under penalty of perjury under the laws of the State of California that the
24 foregoing is true and correct.

25 Executed on August 7, 2018, at Los Angeles, California.

26 
27 Cynthia Marchena
28